

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KIFA MUHAMMAD, aka MARCUS
JOHNSON,

Plaintiff,

v.
CASILLAS, et al.,,

Defendants.

No. 2:21-cv-0411 DJC KJN P

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 27, 2023, the Magistrate Judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed objections on May 25, 2023. On May 31, 2023, Plaintiff was granted an extension to file objections, *nunc pro tunc*, and Defendants were granted fourteen days in which to file a response. On June 8, 2023, Defendants filed a response.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule

1 304, this Court has conducted a *de novo* review of this case. Having carefully
2 reviewed the entire file, the Court finds the findings and recommendations to be
3 supported by the record and by proper analysis.

4 In addition to adopting the analysis of the Magistrate Judge, in relation to the
5 Eighth Amendment claim resulting from the near collision the Court observes that the
6 only evidence Plaintiff has brought forward that Defendants' reckless driving caused
7 the near collision is Paragraph 10-11 of the verified Complaint, which states:

8 10. As we left the prison I was in one van by myself while
9 the other inmates were [sic] in the other van. We were on
10 a one way lane with oncoming traffic in the other lane. The
officer driving the other van I couldn't see but Casilla was
driving the van I was in.

11 11. Around 20 minutes later the officers started racing in
12 both of the vans we were in, we were in the lane of the
13 oncoming traffic. Maybe after 10-20 minutes Casilla
14 slammed on his brakes as we swayed off the road. He
pulled over into a dirt area as we had just almost collided
with a car head on.

15 (ECF 1 p. 9 of 13.) Nothing in Plaintiff's declaration shows that it was the racing that
16 led to the near collision, which was with a car, not the other van. While that causal
17 connection is the inference Plaintiff wishes to draw, at this stage of the proceedings
18 Plaintiff is required to produce some evidence of Defendants' deliberate indifference.
19 Aside from the failure of officers to place Defendant in a seatbelt, which as the
20 Magistrate Judge observed is insufficient standing in isolation, Plaintiff has failed to
21 provide such evidence, and the Magistrate Judge properly recommended granting
22 summary judgment.

23 Accordingly, IT IS HEREBY ORDERED that:

24 1. The findings and recommendations filed February 27, 2023 (ECF No. 40),
25 are adopted in full;
26 2. Defendants' motion for summary judgment (ECF No. 28) is granted;

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- 1 3. Defendant Jane Doe is dismissed without prejudice; and
- 2 4. The Clerk of the Court is directed to enter judgment.

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5 IT IS SO ORDERED.

6 Dated: July 21, 2023


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

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